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**IN THE  
COURT OF APPEALS OF INDIANA**

In the Matter of the Termination of the Parent- )  
Child Relationship of N.L.E. and K.D.M., Minor )  
Children, and Mindy Lee Warthan, Mother, )

MINDY LEE WARTHAN.

Appellant-Respondent,

VS.

TIPPECANOE COUNTY DEPARTMENT  
OF CHILD SERVICES,

Appellee-Petitioner.

[illegible]

No. 79A05-0611-JV-656

APPEAL FROM THE TIPPECANOE SUPERIOR COURT

The Honorable Loretta H. Rush, Judge

The Honorable Cynthia P. Smith, Judge Pro Tempore

Cause Nos. 79D03-0605-JT-76 and 79D03-0605-JT-74

**April 20, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Mindy Lee Warthan (“Mother”) appeals the trial court’s order terminating her parental rights as to her children. Mother raises the issue of whether sufficient evidence was presented to support the trial court’s decision to terminate her parental rights.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On August 19, 1999, N.L.E. was born to Mother and Lance Edwards,<sup>1</sup> and on September 4, 2001 K.D.M. was born to Mother and Keith Miller.<sup>2</sup> Thereafter, Mother was involved with several different men. The Tippecanoe County Department of Child Services (“DCS”) first became involved with N.L.E. and K.D.M. in May of 2005 when no one was home to meet N.L.E. at the school bus. The bus driver returned N.L.E. to the school corporation where a Child Protective Services (“CPS”) investigator picked her up.

The investigator returned to Mother’s home and found Mother’s boyfriend, Leonard Brewer. Brewer’s appeared to be under the influence of drugs because his eyes were puffy and his nose was bleeding.<sup>3</sup> The investigator eventually contacted Mother and told her to meet a CPS supervisor at the police department. Mother went to the police department and brought K.D.M. Upon her arrival, Mother admitted that she smoked marijuana that could have been laced with another drug. Both children were taken into protective custody. Mother then submitted to a urine screen and tested positive for cocaine. Later that week, the trial court held a detention hearing and ruled

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<sup>1</sup> Edwards is not a party to this appeal and did not appeal the termination of his parental rights.

<sup>2</sup> Miller is not a party to this appeal and did not appeal the termination of his parental rights.

<sup>3</sup> The CPS investigator later learned that Brewer has a lengthy criminal history and was involved with DCS in his own termination of parental rights proceedings for his son.

that the children should be removed from Mother's home because continuing to live there was contrary to their best interests and welfare.

A week after N.L.E. and K.D.M. were taken into protective custody, Mother was arrested for possession of cocaine and marijuana. At the time, she was already on probation for a July 2004 battery conviction. She also had been involved in several other criminal matters including criminal mischief, another felony possession of a narcotic drug and marijuana, maintaining a common nuisance, and failure to stop after accident causing property damage. The CPS investigator learned that the Sheriff's Department has made forty-two calls to Mother's home for various complaints, many for domestic violence.

DCS filed a Child in Need of Protective Services ("CHINS") petition alleging that N.L.E. and K.D.M. were in physical and mental danger as a result of Mother's inability, refusal, or neglect to supply them with necessary food, shelter, clothing, medical care, education, or supervision. After the CHINS permanency planning hearings, the trial court granted DCS's CHINS petition, and ordered the children be made wards of DCS. The children were to participate in treatment, supervised visitation with Mother, Greater Lafayette Area Special Services Cooperative ("GLASS") services, evaluation, and physical therapy. Mother was ordered to: visit with her children on a regular basis; submit to random drug screens; remain drug free; maintain monthly contact with DCS; participate in individual therapy; complete an intensive outpatient care; participate in family therapy; complete a psychological evaluation; participate in family preservation services; complete parenting classes; and obtain and maintain employment and housing.

Mother underwent a Rapid Assessment and the evaluator noted that Mother appeared to be angry that her children were in placement and claimed she did nothing wrong. She blamed neighbors, racism, and CPS for her children's removal and took no responsibility. After Mother's Psychological Evaluation, the Doctor noted that Mother:

. . . is self-centered, impulsive, suspicious and manipulative. She is an argumentative and rationalizing individual who tends to externalize responsibility by placing blame on others . . . . Egocentric and self-indulgent, . . . [Mother] is resentful of any limits placed on her behavior and she is reluctant to accept responsibilities that require self-sacrifice. Much of her energy is focused on the pursuit of pleasure, excitement, and short-term goals. She has difficulty sustaining a long-term commitment to goals or relationships. . . . She feels little responsibility other than to herself, and her relationships are often shallow and superficial.

*Appellant's App.* at 852. She did acknowledge that she has poor judgment and that she "cling[s] to bad guys – alcoholics, drug abusers, cheaters." *Id.* at 847. Mother also has a lengthy history of substance abuse. She began using alcohol and drugs at the age of eleven and marijuana at fifteen. Further, she is always involved with men who abuse drugs and sometimes abuse her. Her children have witnessed these incidents of violence.

During Mother's family preservation services, she worked to maintain employment and housing, and become responsible for her actions. However, Mother was unable to afford her own housing and her decision-making skills, including those she choose to associate with, did not improve during this time. Mother also had difficulty during supervised visitation with N.L.E. and K.D.M. The supervisor reported that she used television and meals to entertain the children and did not participated in any family activities. Mother has missed several meetings without good reason. During the times she made visitation, Mother had trouble controlling N.L.E.'s and K.D.M.'s behavior.

The visit facilitator commented that N.L.E. was so violent during her tantrums that she had to be physically restrained to protect herself.

K.D.M. was ordered to attend play therapy to address his exposure to excessive violence and substance abuse. When K.D.M. initially entered DCS's care, his speech was delayed, and he was unable to walk with a normal heel-toe gait pattern. He was classified as a "seriously emotionally disturbed" child, who suffered from a limited frustration tolerance and engaged in head banging to fall asleep. *Id.* at 856, 756. K.D.M's playtime often involved a lot of aggression and he admitted that he witnessed many instances of violence directed against his mother. *Id.* at 97. N.L.E. was also ordered to attend play therapy. Initially, she was violent with her toys and activities. She also gorged herself with food whenever she had a chance and was described as very overweight. *Id.* at 883. Also, she engaged in provocative play with K.D.M.

After several months of treatment, Mother had failed to meet any prescribed rehabilitation. The family preservation services provider commented that Mother was deceitful in her relationships and activities and failed to learn to put her children's needs before her own. *Id.* at 135. On March 30, 2006, Mother again tested positive for cocaine. Thereafter, she was placed in an Intensive Outpatient Program and ordered to continue her individual psychotherapy. Originally, she had been excused from being required to attend these programs because of some initial progress, but once she returned to her destructive behavior, she was placed in the program. However, Mother failed four times to attend treatment sessions. She was ordered to enter Hope with Hope or the Riverside Program's treatment center. Again, Mother failed to do so. In total, Mother

failed to complete any drug rehabilitation program during the course of the CHINS proceeding. Mother also failed to maintain any consistent attendance at parenting group sessions.

On May 1, 2006, the trial court authorized DCS to file a Petition for Termination of Mother's Parental Rights. Thereafter, DCS filed its petition, and the trial court held a hearing on the petition. The trial court ordered the termination of Mother's parental rights as to her two children, N.L.E. and K.D.M. Mother now appeals.

### **DISCUSSION AND DECISION**

The Fourteenth Amendment of the United States Constitution protects the rights of parents to establish a home and raise their children. *In re L.V.N.*, 799 N.E.2d 63, 68 (Ind. Ct. App. 2003). Although parental rights are constitutionally protected, they are not absolute and must be subordinated to the children's interests when determining the proper disposition of a petition to terminate parental rights. *In re D.G.*, 702 N.E.2d 777, 781 (Ind. Ct. App. 1998). The purpose of terminating parental rights is not to punish parents but to protect their children. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Termination of parental rights can be proper not only when the child is in immediate physical danger, but also when the child's emotional and physical development is threatened. *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*.

Because the trial court in this case entered findings and conclusions of law, the specific findings control only as to the issues they cover, and the general judgment controls as to the issues upon which the court has not made findings. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003). The

specific findings will not be set aside unless they are clearly erroneous, and we will affirm the general judgment on any legal theory supported by the evidence. *Id.* When we review the trial court's findings, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We consider only the evidence and reasonable inferences drawn therefrom that support the verdict. *Id.* A judgment is clearly erroneous when it is unsupported by the findings and conclusions entered upon those findings. *Id.* at 198-99. We will only reverse a termination of parental rights on appeal upon a showing of clear error, which leaves us with a definite and firm conviction that a mistake has been made. *Id.* at 199.

Mother argues that DCS failed to present sufficient evidence to support the termination of her parental rights. In order to effect the termination of a parent-child relationship, DCS must establish that:

(A) one of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

IC 31-35-2-4(b)(2). These allegations must be proven by clear and convincing evidence.

IC 31-37-14-2; *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

Mother appears to specifically contend that DCS did not prove by clear and convincing evidence that: 1) the conditions that resulted in the removal of the children would not be remedied; 2) the continuation of the parent-child relationships posed a threat to the well-being of the children; and 3) termination was in the best interests of the children.<sup>4</sup>

## **I. Sufficient Evidence**

### *A. Conditions That Resulted in Removal Will Not Be Remedied*

Although Mother appears to raise both elements of IC 31-35-2-4(b)(2)(B) on appeal, because the statute is written in the disjunctive, the trial court need only find either that the conditions causing removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. We focus our review on the first element.

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<sup>4</sup> Mother does not challenge that the children had been removed from her care for the requisite amounts of time or that there is a satisfactory plan for the care and treatment of the children.



“Where there is a reasonable probability that the conditions that resulted in the child’s removal will not be remedied the parent-child relationship can be terminated.” *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). The trial court must judge a parent’s fitness to care for the child at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d at 721. The trial court must also evaluate the parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*; *In re C.M.*, 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997). A trial court may properly consider evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride*, 798 N.E.2d at 199.

Mother argues that DCS failed to prove by clear and convincing evidence that the conditions that resulted in removal would not be remedied because she has basically complied with most of the requirements that were set out in the dispositional order. She contends that her performance of these requirements was not deficient enough to justify the termination of her parental rights. These arguments essentially ask this court to reweigh the evidence presented at the hearing, which we will not do on review. *See In re D.G.*, 702 N.E.2d at 780.

The evidence most favorable to the judgment shows that Mother had made no progress toward changing the circumstances that resulted in the removal of N.L.E. and K.D.M. Evidence was presented that Mother had repeatedly been involved in relationships with men who have either physically abused her or engaged in illegal or

harmful behaviors in the home. DCS substantiated several cases against Mother for endangering K.D.M. and N.L.E. due to home conditions and lack of proper supervision. These included repeated instances when no one was home to meet K.D.M. at the school bus.

When DCS finally became involved, a DCS worker returned to Mother's home, and found her boyfriend, Brewer, there under the influence of drugs with his nose bleeding and his eyes blood shot. DCS presented evidence that Mother admitted to raising her children in a home that a former boyfriend had turned into a "crack house." *Appellant's App.* at 4.

During both the CHINS and termination proceedings, Mother was unable to maintain adequate housing. She failed to maintain adequate housing or employment to provide for and support her children. Although Mother participated in the services required by DCS, she had several no-shows and cancellations for her therapy appointments.

Additionally, Mother failed to participate in some of the mandated services without notice or explanation. Mother admits that in March 2006 she again engaged in destructive relationships and substance abuse. *Appellant's Br.* at 10. For some of that time, her whereabouts were unknown, and she did not have contact with DCS providers. Mother's family preservation caseworker stated that even after receiving extensive services, Mother continued to associate with people who were not healthy for her or her children. *Appellee's App.* at 112.

The trial court did not err in finding that DCS proved that there existed a reasonable probability that the conditions that resulted in the removal of the children would not be remedied.

*B. Best Interests of the Child*

Mother also argues that there is insufficient evidence to prove that termination of her parental rights was in the best interests of K.D.M. and N.L.E. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Testimony of the DCS caseworker and the Court Appointed Special Advocate (“CASA”) has been found to be sufficient to support the trial court’s conclusion that termination was in the best interests of the child. *McBride*, 798 N.E.2d at 203.

Here, the totality of the evidence demonstrated that the termination of parental rights was in the best interests of K.D.M. and N.L.E. The evidence most favorable to the judgment showed that Mother had a history of drug abuse and destructive relationships. Many of these events the children admitted to witnessing. K.D.M.’s therapist testified that there were obvious signs that he had been exposed to various incidents of violence. She also stated that he had greatly improved in the nine months of therapy, and for that to continue, K.D.M. must be provided a safe, nurturing environment. *Appellee’s App.* at 109. N.L.E.’s play therapist stated that she had made strong improvements and is now, after several months of therapy, showing expressions of positive emotion. *Id.* at 86.

Both children were diagnosed as having special needs that will require consistent monitoring and support. *Id.* at 175. Although, it appeared that Mother loved her children, the case providers stated that they did not believe Mother could provide a safe, stable, drug-free environment to meet these needs. *Id.* The various caseworkers and the CASA agree that the termination of Mother's parental rights is in the best interests of K.D.M. and N.L.E. Therefore, based upon the totality of the evidence, the trial court's finding that termination was in the best interests of the children was supported by the evidence. The trial court did not err in granting the petition to terminate Mother's parental rights.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.